



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 26, 1996

Mr. Scott A. Durfee
General Counsel
Office of the District Attorney
Harris County
201 Fannin, Suite 200
Houston, Texas 77002-1901

OR96-1293

Dear Mr. Durfee:

Your predecessor has asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 27961.

The Harris County District Attorney (the "district attorney") received a request for the following information on persons appointed or selected by the district attorney in the ten years prior to the date of the request:

1. Complete list of all persons selected;
2. Complete resumes or biographies of each person selected;
3. Race and sex of each person selected; and
4. Financial statement of each person selected.

You state that there is no "list" of persons hired since 1984 but that the district attorney has some of the requested information on persons hired since 1987. You also state that some of the employees did not submit resumes or biographies along with their application and no employees submitted financial statements. You further state that the only document reflecting the race of the persons hired appears to be an employment contract. You have submitted samples of the requested documents.¹ You claim that the requested

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not

information is excepted from disclosure under sections 552.101, 552.108, and 552.117 of the Government Code. We have considered the exceptions you claimed and have reviewed the sample documents.

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 39 Tex. Sup. Ct. J. 781, 1996 WL 325601 (June 14, 1996). The submitted documents do not fall within either of these categories and may not be withheld under section 552.108.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 552.101 also encompasses information protected by common-law and constitutional privacy. We have reviewed the submitted documents and conclude that none of that information is excepted from disclosure under either common-law or constitutional privacy. As you have submitted only a sample of the requested information, we enclose a list of some types of information that are confidential. We note that this list is intended to be exemplary only and is not an exhaustive list.

However, some of the submitted information may be confidential by law. As mentioned above, section 552.101 encompasses information protected by other statutes. This office has concluded that information collected under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the "ADA"), from an applicant or employee concerning that individual's medical condition and medical history is confidential under section 552.101 of the Government Code, in conjunction with provisions of the ADA. Open Records Decision No. 641 (1996). This type of information must be collected and maintained separate from other information and may be released only as provided by the ADA. We enclose a copy of Open Records Decision No. 641 (1996) for your information. If any of the information on the enclosed applications was collected under the ADA, the district attorney must withhold it pursuant to the reasoning in Open Records Decision No. 641 (1996).

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address and home telephone number of a peace officer and a former government employee or official.² Section 552.117 requires you to withhold

(Footnote continued)

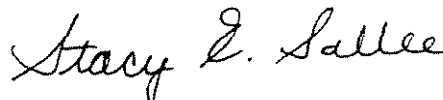
authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²We note that section 552.117 was amended in the most recent legislative session. Act of May 29, 1995, 74th Leg., R.S., ch. 1035, § 9, 1995 Tex. Gen. Laws 5127, 5132 (Vernon). However, the amendments effect only those requests received by governmental bodies on or after September 1, 1995.

this information for an official, employee, or former employee who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information if the employee had not made a request for confidentiality under section 552.024 at the time this request for the documents was made.³ Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.⁴

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 27961

Enclosures: Open Records Decision No. 641 (1996)
Confidentiality list
Submitted documents

(Footnote continued)

Id. § 26, 1995 Tex. Gen. Laws at 5142. We do not address in this ruling how these amendments will affect requests made for this information received by governmental bodies on or after September 1, 1995.

³Peace officers need not make such an election. Protection for their home addresses and home telephone numbers is automatic.

⁴Federal law may prohibit disclosure of these employees' social security numbers. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information.

cc: Mr. Jim Thompson
Executive Director
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P.O. Box 91212
Houston, Texas 77291-1212
(w/Open Records Decision No. 641 (1996), confidentiality list;
w/o submitted documents)